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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**RESPONSE TO NOTICE OF INCOMPLETE NON-PROVISIONAL APPLICATION,
AND PETITION UNDER 37 C.F.R. §1.53(e) TO BE ACCORDED A FILING DATE**

APPLICANT: Joachim Sallvin
SERIAL NO.: 10/091,075 GROUP ART UNIT: 3761
FILED: March 5, 2002 CONFIRMATION NO. 6698
TITLE: "MECHANICAL BREATHING AID WITH ADAPTIVE
EXPIRATION CONTROL"

Assistant Commissioner for Patents,
Washington, D.C. 20231

S I R:

This paper is filed in response to the Notice of Incomplete Nonprovisional Application mailed August 29, 2002, which stated that the above-referenced application has not been accorded a filing date, and which stated that the specification does not include at least one claim and that an Abstract was not provided. The aforementioned Notice also required a newly executed Declaration covering the above items.

This Notice mailed August 29, 2002 (a copy of which is attached hereto) was sent in response to a submission entitled Response to Notice of Incomplete Reply filed August 6, 2002, which responded to the Notice of Incomplete Reply mailed July 3, 2002. The Notice of Incomplete Reply mailed July 3, 2002 stated that a Reply filed on behalf of the Application on June 7, 2002, responding to a Notice to File Missing Parts, was incomplete because it did not include a substitute specification in compliance with 37 C.F.R. §1.52. In the Response to Notice of Incomplete Reply filed August 6, 2002, Applicant stated that a substitute specification had, in fact, been

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submitted with the June 7, 2002 Reply, wherein the handwritten items which were present in the original application were incorporated into the typewritten text.

The original Notice to File Correction Application Papers, mailed April 5, 2002, required a substitute *specification* in compliance with 37 C.F.R. §1.52 because the originally-filed papers contained hand lettering.

Since this requirement specifically was directed to a substitute *specification* (as opposed to a substitute *application*), and since it also made reference to the papers containing hand lettering, it was assumed that this was a requirement under 37 C.F.R. §1.52(c)(1) to submit, as explicitly stated, a substitute *specification*, and 37 C.F.R. §1.52(c)(1) directly addresses the hand lettering situation, and states that substitute *specification* under 37 C.F.R. §1.125 is then required. 37 C.F.R. §1.125, in turn, explicitly states that a substitute specification filed under that section shall exclude the claims. Applicant therefore believes the originally-submitted substitute specification, and the re-submitted substitute specification, fully complied with the requirements in the form set forth in the Notice to File Corrected Application Papers mailed April 5, 2002 and in the Notice dated April 5, 2002 and in the Notice dated July 3, 2002, all of which used the identical, aforementioned language requiring submission of substitute *specification*.

The Notice of Incomplete Nonprovisional Application mailed August 29, 2002, for the first time, stated that the specification does not include at least one claim, and required an Abstract, and required a newly executed Declaration. The original application papers did not include any hand lettering on the Abstract, and therefore

there was previously not seen to be a need to submit a substitute Abstract. Moreover, in view of the explicit requirement to submit a substitute *specification*, rather than a substitute *application* (the term "application" being used elsewhere in 37 C.F.R. §1.52 and clearly being different from the usage of the term "specification" in that Rule), Applicant submits that until the Notice mailed August 29, 2002, there was no clear requirement from the Patent and Trademark Office that a complete *application* (specification, claims, Abstract) was being required.

It also appears as if the Notice of Incomplete Nonprovisional Application mailed August 29, 2002 has treated the previous submissions of the substitute specification as the filing of the original application, hence the additional requirement for a signed Declaration.

The present Response is accompanied by a complete "clean" copy of the entire application (specification, claims, Abstract) as well as a copy of the signed Declaration which filed with the original application papers on March 5, 2002. Applicant submits that all of the requirements to be accorded a filing date were satisfied by the original application papers filed March 5, 2002, and therefore a filing date as of March 5, 2002 is respectfully requested. Moreover, had any of the previous Notices explicitly required a substitute application, a complete clean copy of the application would have been submitted. Since the requirement to submit a substitute *specification* was repeated identically three times in three Notices from the Patent and Trademark Office, Applicant was entitled in assuming that this was what was intended. Only in the latest Notice mailed August 29, 2002 has any further information been provided.

Since Applicant believes the explicit requirement in each of the aforementioned Notices was satisfied, and since it appears as if Applicant's previous submission was erroneously treated as the original application, rather than as a substitute specification, Applicant submits that the Petition fee required by 37 C.F.R. §1.17(h) is not required. Nevertheless if, and only if, the Commissioner determines that such a fee is required, the Commissioner is authorized to charge Deposit Account No. 501519 for that Petition fee in the amount of \$130.00. A duplicate copy of this sheet is attached.

Granting of the present Petition and passage of the application to an Examiner for examination on the merits are therefore respectfully requested.

Submitted by,

Steven H. Noll (Reg. 28,982)

SCHIFF, HARDIN & WAITE
CUSTOMER NO. 26574

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Attorneys for Applicants.

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on October 4, 2002.

Steven H. Noll

STEVEN H. NOLL

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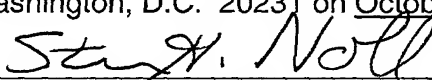
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STEVEN H. NOLL



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/091,075	03/05/2002	Joachim Sallvin	P02,0062

26574
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CONFIRMATION NO. 6698

FORMALITIES LETTER



OC000000008710658

Date Mailed: 08/29/2002

NOTICE OF INCOMPLETE NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

A filing date has NOT been accorded to the above-identified application papers for the reason(s) indicated below.

All of the items noted below and a newly executed oath or declaration covering the items must be submitted within **TWO MONTHS** of the date of this Notice, unless otherwise indicated, or proceedings on the application will be terminated (37 CFR 1.53(e)).

The filing date will be the date of receipt of all items required below, unless otherwise indicated. Any assertions that the item(s) required below were submitted, or are not necessary for a filing date, must be by way of petition directed to the attention of the Office of Petitions accompanied by the \$130.00 petition fee (37 CFR 1.17(h)). If the petition states that the application is entitled to a filing date, a request for a refund of the petition fee may be included in the petition.

- The specification does not include at least one claim.

The application is informal since it does not comply with the regulations for the reason(s) indicated below.

The required item(s) identified below must be timely submitted to avoid abandonment:

- An abstract was not provided for this application. An abstract of the technical disclosure is required under 37 CFR 1.72(b).

*A copy of this notice **MUST** be returned with the reply.*

Roberta Lucas

Customer Service Center

Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE

RECEIVED

SEP 4 2002

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